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No. 648

In the Supreme Court of the United States

OCTOBER TERM, 1964

DEPARTMENT OF FISH AND GAME OF THE STATE OF CALIFORNIA,

Petitioners,

v.

FEDERAL POWER COMMISSION; PACIFIC POWER AND LIGHT COMPANY,

Respondents.

STATEMENT AMICUS CURIAE SUBMITTED BY THE STATE OF LOUISIANA IN SUPPORT OF THE GRANTING OF THE REQUESTED WRIT OF CERTIORARI

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

No. 512

In the Supreme Court of the United States

OCTOBER TERM, 1964

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Petitioners,

v.

FEDERAL POWER COMMISSION; PACIFIC POWER AND LIGHT COMPANY,

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STATEMENT

The State of Louisiana, by its undersigned Attorney General, appears herein amicus pursuant to Rule 42(4) to support the granting of the requested writ of certiorari herein upon the ground that a determination by this Court on the merits of the issue involved will be of importance in the future administration of any programs it may have.

The State of Louisiana does not have any problems identical or similar to the one presented in this case; however, the State of Louisiana believes and therefore

asserts that it would be harmful to the State of Louisiana and the Louisiana Wildlife and Fisheries Commission to so broaden the power of the Federal Power Commission so as, in effect, to grant to the Federal Power Commission the power to impose on any state any portion of the burden of operating and maintaining facilities which the Commission has caused its licensee to construct as part of a plan to utilize and develop waterways.

THE DECISION BELOW IS IN ERROR BECAUSE:

(1) The Federal Power Commission has no authority under the statutory provision involved in this case (16 U.S.C. Sec. 803 (a)) to apportion costs or expenses between a state department and a federal power commission's private licensee.

(2) The requirement that the state bear any part of operation and maintenance cost of a project under license to a private organization or association issued by the federal power commission broadens the federal power act and reads into it matters that are not therein contained.

(3) Once the Federal Power Commission determines that a proposed plan for use of a particular waterway must include construction of recreational facilities, it necessarily follows that the commission must also provide for the operation and maintenance of the facilities by its licensee; otherwise, there is no guarantee that the overall plan will be successfully implemented as contemplated by the statute.

CONCLUSION

The Petition for a writ of certiorari should be granted because the Court of Appeals for the 9th Circuit has decided erroneously an important issue concerning the application of Section 10(a) of the Federal Power Act with reference to important recreational resources within the states of the Union. This issue has not been heretofore decided and it should now be resolved by the Supreme Court.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

Baton Rouge, Louisiana,
December 21, 1964.

CERTIFICATE OF COUNSEL

I, Jack P. F. Gremillion, a member of the Bar of the United States Supreme Court, and Attorney General for the State of Louisiana, do hereby certify that I have, on this the_____day of December, 1964, placed conforming printed copies of the foregoing amicus curiae statement in support of the granting of the requested Writ of Certiorari in the United States Mail, with sufficient first class postage prepaid, addressed to: Phleger & Harrison, Counsel for Pacific Power & Light Company; Richard A. Solomon, Counsel for Federal Power Commission; and the Honorable Archibald Cox, Counsel for Federal Power Commission.

Baton Rouge, Louisiana, this 2nd day of December, 1964.

Jack P. F. Gremillion

JACK P. F. GREMILLION,
Attorney General.